EXHIBIT C

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For a thriving New England

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July 8, 2016

VIA Registered Mail and Certified Mail, Return Receipt Requested

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RE: Amended Notice of Violations and Intent to File Suit under the Resource Conservation and Recovery Act and Clean Water Act

To Whom it May Concern:

This letter supersedes and replaces that portion of the Notice of Intent issued by CLF on May 17, 2016 regarding the Clean Water Act violations at the Everett Terminal. This letter does not amend or alter those allegations associated with the Resource Conservation and Recovery Act ("RCRA") claims contained in the May 17, 2016 Notice of Intent and that portion of the Notice of Intent is included herein only for reference.

This letter constitutes a Notice by Conservation Law Foundation, Inc. ("CLF")[1] to ExxonMobil Oil Corporation (together with ExxonMobil Pipeline Company, hereinafter, "ExxonMobil" or "You") under Section 7002(b)(2)(A) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6972(b)(2)(A). Please be advised that unless, within ninety (90) days following your receipt of CLF's May 17, 2016 Notice, You adequately resolve the conditions at the marine distribution terminal in Everett, Massachusetts (the "Everett Terminal") operated by You, which may present an imminent and substantial endangerment to health or the environment, CLF intends to file a Complaint in the United States District Court of the District of Massachusetts to assert claims against You and any other entities that may have contributed to the conditions at the Everett Terminal, seeking declaratory and injunctive relief pursuant to RCRA Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), civil penalties, and CLF's reasonable litigation costs, including attorneys and expert witness fees and costs. Pursuant to RCRA Section 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), such action will not be filed earlier than ninety days from the date of CLF's May 17, 2016 Notice of Intent.

CLF also gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA," or "Act"), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., part 135 and 40 C.F.R. 254 to the addressed persons of CLF's intention to file suit in the United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

1. RCRA Violations

ExxonMobil, acting through officers, managers, subsidiary companies, and instrumentalities, owns or has owned or operates or has operated all or portions of the Everett Terminal, which

[1] CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England's environment.

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consists of a "tank farm," three berths, buildings and infrastructure located at 52 Beacham Street in Everett, in the Commonwealth of Massachusetts, at the confluence of the Island End River with the Mystic River. You are a Large Quantity Generator of hazardous waste at the Everett Terminal, and, as more fully described below, You have contributed and are contributing to the past or present handling, storage, treatment, transportation, or disposal of solid and hazardous wastes which may present an imminent and substantial endangerment to health or the environment in violation of RCRA.

CLF hereby asserts that You have contributed to the past or present handling, storage, treatment, transportation, or disposal of Hazardous Waste, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and Solid Waste, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), at the Everett Terminal, which may present an imminent and substantial endangerment to health or the environment. Based on the information currently available to CLF, the toxic and hazardous wastes and pollutants listed below, many of which are highly carcinogenic, are present at the Everett Terminal:

2,4-Dimethylphenol	Benzene	Chrysene	Indeno[1,2,3cd] pyrene	SGT-HEM (Oil and Grease)
3&4 Methylphenol (Cresol)	Benzo[a] pyrene	Cyanide	Iron	Toluene
Acetone	Benzo[b] fluoranthene	Dibenzo[a,h] anthracene	Lead	Xylenes [m,p,o]
Antimony	Benzo[k] fluoranthene	Di-n-butyl phalate	Mercury	Petroleum Hydrocarbons
Arsenic	Cadmium	Ethylene	Naphthalene	Phenols
Benz(a)anthracene	Chromium	Fluoranthene	Nickel	Zinc
Methyl Tertiary-Butyl Ether (MTBE)	Tert-Butyl Alcohol (TBA)	Phthalates/Phthalate esthers	Coal Tar	Butyl benzyl phthalate
Acenaphthylene	Benzo(ghi)perylene	Tert-Butyl Alcohol	Acenaphthene	Phenanthrene
Fuel Oil	Anthracene	Total BTEX	Gasoline	

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To the extent that other Hazardous and Solid Wastes are revealed to be present at the Everett Terminal (a fact that You are in a better position to know than CLF) You are put on notice that CLF intends to include these wastes in its proof of your RCRA violations. You routinely discharge many of these toxic and hazardous wastes into the Island End River and the Mystic River, and the soils and groundwater at the Everett Terminal are heavily contaminated from your past, present, and ongoing handling, storage, treatment, transportation, or disposal of Hazardous and Solid Waste.

The Hazardous and Solid Waste at your Everett Terminal is generated, handled, stored, treated, transported and disposed of at or near sea level in close proximity to major human population centers, Chelsea Creek, the Island End River, and the Mystic River, which flows through the communities of Everett, Somerville, Chelsea, and Boston on its way to Boston Harbor. The first significant storm surge that makes landfill at the Everett Terminal at or near high tide is going to further flush your Hazardous and Solid Waste into the Island End and Mystic Rivers and through those communities, and a significant rise in sea level will put the majority of the Everett Terminal, including soils, groundwater, and treatment works, under water. You know all this, and yet have not taken appropriate steps to protect the public and the environment from this certain risk.

Nor have You disclosed your creation of this immanent and substantial risk to the United States Environmental Protection Agency ("EPA"), state regulators, or the public. On the contrary, You have actively obfuscated, denied, and attempted to conceal these risks from federal and state regulators and the public. Your obfuscation and denial is not and has not been limited to the imminent and substantial endangerment to health or the environment You have created at the Everett Terminal; You have also engaged in a decades-long scheme to conceal and sow doubt regarding the effects of climate change and your role, as the largest oil refiner on the planet, causing the anthropogenic climate change that is resulting in a great frequency of storm surges and extreme weather events and rising sea levels. Your pattern of failing to disclose required information in your possession regarding these risks, and of acting to conceal these risks, may expose You to liability in this matter under legal theories other than the violations of RCRA discussed herein.

Your violations of RCRA are ongoing and continuous. CLF intends to seek a civil injunction, as provided under section 7002 of RCRA, ordering ExxonMobil to perform and pay for such work as may be required to respond to the Hazardous Waste and Solid Waste present at the Everett Terminal and restraining You from further violating RCRA. CLF also intends to seek civil penalties and an award of the costs of litigation, including attorney and expert witness fees, under section 7002 of RCRA.

2. <u>Clean Water Act Violations</u>

The ExxonMobil Everett Terminal is engaged in the receipt, storage, and distribution of petroleum products. The spectrum of fuels handled by this facility consists of gasoline, low sulfur diesel, jet

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fuel, heavy oil, and fuel additives. Petroleum products are received in bulk quantities at the Everett Terminal's marine vessel dock. Product is then transferred, via aboveground piping, to aboveground storage tanks located within the facility's tank farm areas. Final distribution of product is conducted at the facility's truck loading racks. The Everett Terminal operations also include the collection and discharge of stormwater from Sprague Energy, an asphalt storage and distribution facility located on property formerly owned by ExxonMobil.

ExxonMobil operates the Everett Terminal pursuant to an individual permit issued by EPA under the Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit program, 33 U.S.C. § 1342 *et seq*. ExxonMobil currently operates subject to NPDES Permit No. MA0000833, which was issued in 2008 and became effective in 2009. That permit was modified in 2011; the modification became effective on January 1, 2012 (the "Permit"). By its terms, the Permit expired in 2014 and has since been administratively continued.

Among other requirements, the Permit states that "[t]he permittee shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce, or prevent, the discharge of pollutants in storm water to the receiving waters identified in this permit. The SWPPP shall be a written document and consistent with the terms of this permit. The permittee shall comply with the terms of its SWPPP." Permit Part I.B.1, p. 13. ExxonMobil's applications for coverage under NPDES permits, including the currently applicable NPDES Permit, failed to include information documenting climate change induced factors known to ExxonMobil such as increased precipitation, increased magnitude and frequency of storm events, and increased frequency and magnitude of storm surges. By failing to address sea level rise, increased precipitation, and increased magnitude and frequency of storm events and storm surges, ExxonMobil has not developed and is not implementing a SWPPP designed to prevent the discharge of pollutants in stormwater to the receiving waters as identified in and required by the Permit.

As discussed below, ExxonMobil is also routinely violating other terms and conditions of its Permit. The Permit requires ExxonMobil to operate its wastewater treatment system in a specific manner designed to ensure that the maximum amount of wastewater receives the highest level of treatment prior to being discharged. By failing to comply with this condition of the Permit, ExxonMobil is discharging wastewater that has not been adequately treated, resulting in unnecessary and illegal pollution. ExxonMobil is also routinely discharging pollutants in levels that exceed the effluent limitations in its Permit and violate state water quality standards.

The receiving water identified in ExxonMobil's NPDES Permit for the Everett Terminal is the Island End River (Boston Harbor/Mystic River Watershed/Segment MA71-03), a small tributary to the Mystic River. The entire Island End River is less than one-half mile long, and about 500 feet across at its widest point. The Island End River flows into the Mystic River, approximately half a

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mile west of the Mystic River's end in Boston Harbor. The Island End River is designated as a Class SB water body by the Commonwealth of Massachusetts.

The half-moon shaped pond within the Everett Terminal property that is incorporated into the facility's stormwater treatment system, also known as the "Effluent Pond," has existed since time immemorial and is a part of the Island End River, although ExxonMobil (or its predecessors in interest) defined its shape by filling in other areas of surface water sometime during the 1900s. The half-moon shaped pond is connected to the Island End River via subsurface hydrological connections and man-made conduits. The half-moon shaped pond, the Island End River, and the Mystic River are all "waters of the United States" as defined in 40 C.F.R. § 122.2, and, therefore, "navigable waters" as defined in 33 U.S.C. § 1362(7). A man-made structure cannot eliminate the Clean Water Act's jurisdiction over a water of the United States. ExxonMobil's discharges of pollutants into the half-moon shaped pond are unpermitted and therefore violate the Clean Water Act.

The Massachusetts Department of Environmental Protection ("MassDEP") evaluated and developed a comprehensive list of the assessed waters and the most recent list was published in the Massachusetts Year 2014 Integrated List of Waters (MassDEP, December 2015). The list identifies the lower reach of the Mystic River (Segment ID No. MA71-03, which includes the Island End River) as one of the waterways within Massachusetts that is impaired. The impairment, as identified by the MassDEP, is related to the presence of the following pollutants, which were not considered to be present due to natural causes: Ammonia (Un-ionized); Fecal Coliform; Foam/Flocs/Scum/Oil Slicks; Other; Dissolved Oxygen; PCB in Fish Tissue; Petroleum Hydrocarbons; Sediment Screening Value (Exceedence); and Taste and Odor.

Unlawful Certification of SWPPP

NPDES Permit No. MA0000833 requires that: "The SWPPP shall be completed or updated and signed by the Permittee within 90 days after the effective date of this Permit. The Permittee shall certify that the SWPPP has been completed or updated and that it meets the requirements of the permit. The certification shall be signed in accordance with the requirements identified in 40 CFR § 122.22." Part I.B.2, p.13. 40 C.F.R. § 122.22 required ExxonMobil to submit the following certification to comply with §122.22:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and

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> complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

ExxonMobil signed and submitted the certification required by 40 C.F.R. § 122.22 at the time of submittal of (a) each of its NPDES permit applications, and (b) each SWPPP. ExxonMobil signed these certifications without (a) disclosing information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge, and (b) developing and implementing a SWPPP based on information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge. ExxonMobil also signed these certifications without developing and implementing a Spill Prevention, Control, and Countermeasures Plan ("SPCC Plan") based on information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge.

Failure to Prepare SWPPP in Accordance with Good Engineering Practices

NPDES Permit No. MA0000833 requires that: "The SWPPP shall be prepared in accordance with good engineering practices." Part I.B.4, p. 13. ExxonMobil's SWPPP for the Everett Terminal was not prepared in accordance with good engineering practices because the SWPPP was not based on information available to ExxonMobil and consistent with the duty of care applicable to engineers. The SWPPP was not prepared based on information regarding climate change-induced impacts known to reasonably prudent engineers and known to ExxonMobil.

Failure to Identify Sources of Pollution

NPDES Permit No. MA0000833 requires that: "The SWPPP shall . . . identify potential sources of pollution that may reasonably be expected to affect the quality of the stormwater discharges." Part I.B.4, p. 13. This condition of the Permit uses the term "pollution" as opposed to the term "pollutant." ExxonMobil has failed to identify sources of pollution resulting from climate change-induced sea level rise, storm surge, and increased magnitude and severity of storms as sources of pollution reasonably expected, and specifically anticipated by ExxonMobil, to affect the quality of the stormwater discharges from the Everett Terminal.

Failure to Describe and Implement Practices

The Permit requires that: "The SWPPP shall . . . describe and ensure implementation of practices which will be used to reduce the pollutants and assure compliance with this permit." Part I.B.4, p. 13. The SWPPP does not describe or ensure implementation of practices which will be used to

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address pollutant discharges resulting from climate change-induced effects that are known to ExxonMobil.

Failure to Identify Sources, Spill Areas, Drainage

The Permit requires that: ". . . the SWPPP shall contain the elements listed below: A summary of all pollutant sources which includes all areas where spills have occurred or could occur. For each source, identify the expected drainage and the corresponding pollutant." Part I.B.4(c), p. 13. The SWPPP does not address climate change-induced effects as pollutant sources, fails to identify where spills could occur and fails to identify drainage paths associated with storm surge and sea level rise, all of which are known to ExxonMobil.

Failure to Update SWPPP and SPCC

The Permit requires that: ". . . the SWPPP shall contain the elements listed below: A description of all stormwater controls, both structural and non-structural. [Best Management Practices, or] BMPs must include . . . preventative maintenance programs, spill prevention and response procedures, runoff management practices, and proper handling of deicing materials. The SWPPP shall describe how the BMPs are appropriate for the facility. All BMPs shall be properly maintained and be in effective operating conditions." Part I.B.4(e), p. 13-14. The Permit incorporates spill prevention and response procedures as an enforceable BMP in the SWPPP.

A spill prevention and response procedure applicable to the Facility is the Spill Prevention, Control, and Countermeasures Plan required pursuant to 40 C.F.R. § 112, Subpart A. This enforceable BMP requires establishment of "procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)." 40 C.F.R. § 112.1(a)(1) (emphasis added).

The SPCC Plan must prevent discharges from the Everett Terminal because it is a facility, "*which due to its location*, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) . . . ." 40 C.F.R. § 112.1(b) (emphasis added).

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Due to its location, the Everett Terminal is at risk of discharging oil due to climate change-induced sea level rise, storm surges, increased precipitation, and altered, severe, and/or extreme weather events.

The SPCC regulations highlight the applicability of the Plan as follows: "112.1(e): This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws."

The SPCC Regulations underscore that: "(d) Except as provided in §112.6, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part. (1) By means of this certification the Professional Engineer attests: (i) That he is familiar with the requirements of this part; (ii) That he or his agent has visited and examined the facility; (iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part; (iv) That procedures for required inspections and testing have been established; and (v) That the Plan is adequate for the facility. (vi) That, if applicable, for a produced water container subject to §112.9(c)(6), any procedure to minimize the amount of free-phase oil is designed to reduce the accumulation of free-phase oil and the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan. (2) Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part." 40 C.F.R. § 112.3(d).

The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change information known to ExxonMobil, the petroleum industry in general, and to practicing engineers in Massachusetts, including climate change information regarding the certainty of increased sea level rise, storm surges, increased precipitation, and altered, severe, and/or extreme weather events.

Climate change-induced and affected factors such as sea level rise, storm surge, precipitation, and weather events (including severe and extreme weather events) can reasonably be expected to cause or contribute to the discharge of oil in quantities that may be harmful to receiving waters in violation of the SPCC regulations, the SWPPP, and the Permit.

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Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include necessary discharge prevention measures including procedures for routine handling of products.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include necessary and prudent discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

Due to ExxonMobil's failure to consider or incorporate climate change information, including information known to ExxonMobil, the SPCC Plan fails to identify where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge).

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. §112.1(b).

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to assure that the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.

Due to ExxonMobil's failure to integrate climate change information, including information known to ExxonMobil, the SPCC Plan fails to address the typical failure mode associated with climate change-induced or affected factors, and the most likely quantity of oil that would be discharged.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include appropriately designed (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (ii) Curbing or drip pans; (iii) Sumps and collection systems; (iv) Culverting, gutters, or other drainage systems; (v) Weirs, booms, or other barriers; (vi) Spill diversion ponds; (vii) Retention ponds; or (viii) Sorbent materials; and for offshore facilities: (ix) Curbing or drip pans, or (x) Sumps and collection systems.

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Failure to Amend SWPPP and SPCC Plan

NPDES Permit No. MA0000833 requires that: "The permittee shall amend and update the SWPPP within 30 days for any changes at the facility affecting the SWPPP. Changes which may affect the SWPPP include, but are not limited to, the following activities: a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States . . . Any amended or new versions of the SWPPP shall be re-certified by the Permittee. Such re-certifications also shall be signed in accordance with the requirements identified in 40 C.F.R. § 122.22." Part I.B.6, p. 14.

ExxonMobil has not amended its SWPPP based on information regarding climate change known to ExxonMobil. ExxonMobil has not amended its SPCC Plan, to include an engineer's certification based on information regarding climate change known to ExxonMobil. 40 C.F.R. § 112.5.

The Permit requires that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Permit and with the requirements of stormwater pollution prevention plans. Part I.A.14, pg. 9. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the Permit. *See also* 40 C.F.R. § 122.41(e).

ExxonMobil has failed to properly operate and maintain the Everett Terminal to achieve compliance with the conditions of the Permit due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

The Permit requires that "The permittee shall take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment." *See also* 40 C.F.R. § 122.41(d). ExxonMobil has failed take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

By failing to submit information related to climate change-induced and affected factors in its permit application and in reports to the Environmental Protection Agency, ExxonMobil has submitted incorrect information in a permit application or reports to the Regional Administrator.

By failing to submit information related to climate change-induced and affected factors in its permit application and in reports to the Environmental Protection Agency, ExxonMobil has failed to promptly submit such relevant facts or information.

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Failure to Comply with Permit Conditions regarding Discharges through Specified Outfalls

Dischargers of pollutants, including industrial wastewater, process water and stormwater associated with industrial activity, must comply with the requirements of a NPDES permit issued under Section 402 of the Clean Water Act, 33 U.S.C § 1342. Section 301(a) of the CWA prohibits discharges not authorized by, or in violation of, the terms of a valid NPDES discharge permit. NPDES discharge permits contain pollutant sampling and monitoring requirements and limits on the amount or concentration of allowable pollutants, in addition to requirements regarding operation, control measures, best management practices, and recordkeeping and reporting.

The discharge of any pollutant in violation of a NPDES permit, the failure to conduct required monitoring for pollutant discharges, and the failure to comply with other requirements of a NPDES permit are all violations of the Clean Water Act, 33 U.S.C. § 1311(a); 33 U.S.C. § 1342.

The Everett Terminal Permit sets forth the parameters and conditions under which ExxonMobil may discharge without violating the Clean Water Act's prohibitions. Central to these conditions are the operational requirements that define the circumstances under which ExxonMobil may discharge through its three discharge outfalls: Outfalls 01A, 01B and 01C. The Permit requires that discharges up to a certain amount will solely flow through Outfall 01C, providing specifics of the wastewater flow, in part, as follows[2]:

> Wastewater Treatment System Flow
>
> > a. The continuous treatment system shall be designed, constructed, maintained and operated to treat the volume of storm water, groundwater and other associated wastewaters up to and including 280 gpm through outfall 01C.
> >
> > b. The collection, storage and treatment systems shall be designed, constructed, maintained and operated to treat the total equivalent volume of storm water, groundwater, hydrostatic test water, boiler condensate, fire testing water, truck was water, effluent pond water and continuous treatment system filter backwash water which would result from a 10-year 24-hour precipitation event, which volume shall be discharged through outfall 01C and outfall 01A. All wet weather and dry weather discharges less than or equal to the design capacity of the continuous treatment system [280 gpm] shall be treated through the continuous treatment system and

[2] The Permit specifies that discharges from Outfall 01B shall be limited to situations when the combined capacity of the facility to collect and treat through outfalls 01A and 01C is exceeded and are expected only in extreme weather events. *See* Permit Part I.A.23(c), p. 11.

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> discharged at outfall 01C. The flow through the corrugated plate separator shall not exceed 4,000 gpm.

Permit Part I.A.23(a) & (b), p. 10-11.[3] This required flow structure is confirmed by ExxonMobil's Terminal Operator's Guide ("TOG"), which states in pertinent part:

- All dry weather flow, 0–280 gpm, is treated by the OWS followed by dry weather treatment system (DWTS; also known as the CTS) and discharged to outfall 01C.
- Moderate storm event flow, 280–4,000 gpm, is treated by the OWS and discharged to outfall 01A without treatment by the DWTS.
- Heavy storm event flow, 4,000–13,600 gpm, is pumped to tank 140 for treatment by the OWS or DWTS following the storm event. Up to 1.3 million gallons will be transferred to tank 140.

See TOG Oil Water Separator § 6.2.

This tiered discharge structure was implemented pursuant to a settlement agreement between ExxonMobil and EPA whereby ExxonMobil "agreed to extensively redesign its effluent treatment system in order to improve effluent quality under all flow conditions, including through the use of a continuously operated advanced treatment system, and a flow equalization tank to store storm water volume during periods of peak storm water flow." Response to comments on draft modification of NPDES Permit No. MA0000833, at 1-2 (attached to modified Permit). Under the Permit, Outfall 01C is designated as the primary outfall because discharges from 01C are treated through the new continuously operated advanced treatment system. Discharges from Outfalls 01A and 01B receive lower levels of treatment, if any, and thus are only authorized when total flow exceeds the levels designated in the Permit.

Contrary to these express terms of the Permit, discharges from Outfall 01A have frequently occurred even when Outfall 01C has not reached its 280 gpm capacity. As demonstrated in Exhibit 1, ExxonMobil's flow data shows unauthorized discharges from Outfall 01A on over 500 days

[3] With respect to these operational requirements, the Permit also requires that "The permittee shall inspect, operate, and maintain the continuous treatment system, conventional oil water separator and the corrugated plate separator at the facility to ensure that the Effluent Limitations and Monitoring Requirements and other conditions contained in this permit are met. The permittee shall ensure that all components of the facility's Storm Water Pollution Prevention Plan, including those that specifically address the operation and maintenance of the separator(s) and other components of the storm water conveyance system, are complied with." Permit Part I.A.14, p. 9.

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between January 2012 and May 2014. On many of those days, the total discharge from the entire system – *i.e.*, Outfalls 01A and 01C combined – was well below Outfall 01C's maximum capacity of 280 gpm. As a result, the entire discharge system, including Outfalls 01A and 01C, is being operated in violation of the Permit conditions. Through such unlawful operation, ExxonMobil is routinely failing to comply with its Permit and ensure that all of its discharges receive the highest level of treatment possible. Thus, CLF intends to sue for each and every day that the discharge system has been operated in violation of the Permit conditions. At a minimum, this includes each and every one of the more than 500 days listed in Exhibit 1 as a separate and distinct date of violation.

Discharges of Toxic and Hazardous Pollutants in Excess of Numeric Effluent Limits and State Water Quality Standards

As a result of ExxonMobil's industrial operations, the Everett Terminal Facility releases a variety of pollutants into the Island End and Mystic Rivers from and through point sources. ExxonMobil repeatedly discharges pollutants from the Facility into these Rivers, in concentrations and amounts that grossly exceed the numeric effluent limits set out in its NPDES Permit and/or violate State Water Quality Standards. These discharges are toxic to organisms and human health and impair the uses of the Island End and Mystic Rivers.

The Permit requires ExxonMobil to ensure that its discharges do not cause violations of State Water Quality Standards, that pollutants are not discharged in concentrations or combinations that would be hazardous or toxic to human or aquatic life, and that its discharges do not impair the uses designated for the Island End and Mystic Rivers. *See* Permit Part I.A.2, p. 3; Part I.A.3, p. 5; Part I.A.4, p. 6 (stating that for each outfall, any discharge must be "limited and monitored by the permittee as specified" and "not cause a violation of the State Water Quality Standards of the receiving water"); Part I.A.5, p. 9 ("The discharges either individually or in combination shall not cause or contribute to a violation of State Water Quality Standards of the receiving waters."); Part I.A.9, p. 9 ("The discharge shall not contain materials in concentrations or combinations which are hazardous or toxic to human health, aquatic life of the receiving surface waters or which would impair the uses designate by its classification."); Part 1.A.24, p. 11 ("The permittee shall not discharge any pollutant or combination of pollutants in toxic amounts."; "Any toxic components of the effluent shall not result in any demonstrable harm to aquatic life or violate any state or federal water quality standard which has been or may be promulgated."). Massachusetts Surface Water Quality Standards are found at 314 Code Mass. Regs. §§ 4.00, and provide in relevant part that "[a]ll surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife." 314 Code Mass. Regs. § 4.05(5)(e). Under the regulations, the National Recommended Water Quality Criteria published by EPA in 2002 are the allowable receiving water concentrations unless otherwise specified. *See id.*

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Despite these clear restrictions, many of ExxonMobil's discharges violate applicable State Water Quality Standards, and as such, constitute violations of the Permit. Exhibit 2 summarizes these violations.

The conditions of the Permit, which are also included in ExxonMobil's TOG, flatly prohibit any discharge from Outfall 01A unless Outfall 01C has reached maximum capacity. Thus, each day there is discharge from Outfall 01A when Outfall 01C is below its maximum capacity of 280 gpm constitutes a separate and distinct violation for each and every pollutant present in the discharge, since no pollutants may be discharged from Outfall 01A if Outfall 01C has not reached maximum capacity. This includes all such days documented in Exhibit 1, as well as any additional days that new information may reveal.

ExxonMobil is also routinely discharging pollutants in amounts exceeding the maximum allowable levels set by the numeric effluent limits in the Permit. As shown in Exhibit 3, ExxonMobil self-reported over one hundred (100) violations of numeric effluent limits during the last four and a half years (running from January 2012 through June of 2016). Many of these discharges of hazardous pollutants exceeded the numeric effluent limits by several thousand percent. If new information reveals additional violations of the permitted levels of pollutant discharges, CLF intends to include those violations in its suit.

The Permit's effluent limits are enforceable through a citizen suit even if EPA has apparently determined that it will not take enforcement action unless the concentrations of toxins in ExxonMobil's discharges reach a level many times greater than the permitted limits. *See* Part I.A.2 n.7, p. 4 ("Compliance/non-compliance for Polycyclic Aromatic Hydrocarbons (PAHs) for discharges at outfall 01A shall be 10 µg/l for individual PAHs."). This footnote in the Permit merely explains how EPA will exercise its own enforcement discretion – to interpret it as superseding the Permit's numeric effluent limitations would undermine the Permit, the state regulations establishing water quality-based effluent limitations, and the Clean Water Act itself.

In addition to the violations of numeric limitations and water quality standards, there have been at least four instances in which discharges associated with the ExxonMobil and/or Sprague Energy facilities were reported to the National Incident Command. All four of these incidents, which occurred in 2011, 2014 and 2015 and are identified in Exhibit 4, resulted in a discharge that reached the water, identified as the Mystic River and/or Island End River. These discharges violate the Permit generally, and specifically violate the provision that provides in part that: a "discharge shall not cause a visible oil sheen, foam, or floating solids." Permit Part I.A.8, p. 9.

Every day in which ExxonMobil has failed and continues to fail to comply with the requirements of the Clean Water Act and NPDES Permit No. MA0000833 is a separate and distinct violation of ExxonMobil's NPDES Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

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The discharge of any pollutant in violation of a NPDES permit, the failure to conduct required monitoring for pollutant discharges, and the failure to comply with other requirements of a NPDES permit are all violations of the Clean Water Act, 33 U.S.C. § 1311(a); 33 U.S.C. § 1342.

Additional information, including information in ExxonMobil's possession, may reveal additional violations. For example, this letter covers violations occurring after the date of the most recent publically available discharge monitoring report ("DMR") data. In addition, this letter covers violations that continue or reoccur, or that can reasonably be expected to continue or reoccur, after the date of this letter. This letter covers ExxonMobil's failure to take corrective action to abate the numeric effluent limit violations and other Permit violations. CLF intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice letter. This notice letter covers all such violations to the full extent permitted by law.

These violations are ongoing and continuous, or capable of repetition, and barring a change at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations are likely to continue indefinitely. ExxonMobil is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§19.2, 19.4, each separate violation of the Act subjects ExxonMobil to a penalty up to $32,500 per day for each violation that occurred between March 15, 2004 and January 12, 2009; up to $37,500 per day for each violation that occurred between January 12, 2009 and November 2, 2015; and up to $51,570 per day for each violation that occurred after November 2, 2015. CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring ExxonMobil to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

CONCLUSION

During the notice period (90 days under RCRA which began May 17, 2016, and 60 days under the Clean Water Act), CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If You wish to pursue such discussions, please have your attorney contact CLF within the next 20 days so that negotiations may be completed before the end of the notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the notice period.

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Sincerely,

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